



Elder abuse – protection and prevention

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As solicitors, we are being advised to be increasingly aware of elder abuse with Australia's ageing population. Elder abuse can take many forms including physical abuse, sexual abuse, emotional or psychological abuse, neglect, abandonment, financial abuse and self-neglect.

Lawyers are most likely to encounter financial elder abuse in their work

Whilst solicitors need to be aware of the markers of all types of elder abuse, it is financial abuse that we are most likely to encounter.

Financial abuse usually occurs in a trusted relationship between the elderly person and the perpetrator. Perpetrators can include immediate family members, close friends, neighbours, carers etc. The elderly person is more likely to be vulnerable and dependent on others and the perpetrator then takes advantage of that trust by illegally or improperly using the elderly person's assets, including money.

Recognising elder abuse

Instances where elder abuse may become apparent include, but are not limited to:

1. The client's attorney, appointed under [Power of Attorney](#), not acting in the client's best interest;
2. The transferring of the client's assets for nominal/minimal value or the gifting of client's assets, particularly valuable assets such as a property;

3. Transfer of a client's asset to another person for them to "hold on their behalf";
4. The client's relative or friend insists on being present during appointments;
5. An out of character amendment to the client's [Will, Power of Attorney or Appointment of Guardian](#).

When lawyers suspect elder abuse

As solicitors, if we believe that elder abuse could be an issue, we need to address these issues further. However, our ability to deal with any instances of elder abuse are subject to the Australian Solicitors' Conduct Rules.

Our role as a solicitor is to:

1. act in the best interests of the client;
2. follow the client's lawful, proper and competent instructions; and
3. not disclose any information which is confidential to a client unless there is an exemption. Exemptions could occur, for example, if the client provides consent to disclose certain information or if the client or another person is in imminent serious physical harm.

Therefore, we need to ensure the client is properly advised in relation to the matters they are seeking advice on.

Once advised, we need to proceed based on the client's instructions, even if those instructions are to not follow up any suspected cases of elder abuse.

Confirming a client has capacity to provide instructions

In order to advise appropriately and act on the client's instructions, we need to ensure that the client has the requisite capacity to understand the advice being provided and to make an informed decision as to how to proceed in a matter. We may request for our client to undertake a mental capacity assessment to ensure they can be appropriately advised and provide instructions in relation to any matter.

We cannot disclose any information which is confidential to a client, to a third party.

Get help

If you, or someone you know, are a victim of elder abuse then the following are key contacts to obtain assistance:

- NSW Police- Urgent assistance contact [000](#). NSW Police have some Aged Crime Prevention Officers;
- [NSW Ageing and Disability Commission](#) – [1800 628 221](#)
- [Senior Rights Service](#) - [1800 424 079](#)

• [Relationships Australia NSW - 1300 364 277](#)

• [Lifeline - 13 11 14](#) OR text [0477 13 11 44](#)

• [1800 Respect - 1800 737 732](#)

• [NSW Domestic Violence Line - 1800 65 64 63](#)

Need to update your estate planning documents?

If you, or someone you know, is experiencing elder abuse in any form, updating your estate planning documents can be one component of protecting your assets.

We can assist you to update (or write new):

• [Your Will](#)

• [Power of Attorney](#)

• [Appointment of Enduring Guardian.](#)

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

[02 9997 2111](#)

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This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact E&A Lawyers.